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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. C/473 - 475 / 2008 -SM[BR]

Date 11/01/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :

1. M/S R.U.IMPORT EXPORT PVT. LTD.
GROUND FLOOR, SEHRAWAT COMPLEX, NANGAL DEWAT, NEW DELHI.

[2] SHRI RAKESH KUMAR,
H.NO. 26 / 86 VISHWAS NAGAR
SHADRA NEW DELHI

M/S R.U.IMPORT EXPORT PVT. LTD. Appellant

Vs

C.C. (EXPORT) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 34 – 36 / 2010 -SM[BR] dated 31.12.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C. (EXPORT) NEW DELHI
   AIR CARGO EXPORT, NEW CUSTOM HOUSE, NEW DELHI 110037
2. Adv. / Consult
   MR.S.S.ARORA
   B1/71, SAFDARJUNG ENCLAVE, N.DELHI-29
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

3. SHRI RAJESH MAIKHURI, DIRECTOR
M/S R.U.IMPORT EXPORT PVT. LTD. GROUND FLOOR,SEHRAWAT COMPLEX,NANGAL DEWAT
NEW DELHI.

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Customs Appeal No. 473-475 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. JJ/ACE/02/2008 dated 28.1.08 passed by Commissioner of Customs, New Delhi]

For approval and signature:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

M/s. R.U. Import Export (P) Ltd. — Appellants
Rakesh Kumar
Rajesh Maikhuri

Vs.

Commissioner of Customs (Export) — Respondent
New Delhi

Appearance:

Shri S.S. Arora, Advocate for the Appellants
Shri S.N. Srivastava, SDR for the Respondent

Date of Hearing/decision : 31.12.2009

ORAL ORDER NO. 34-36/2010 SM(BR)

Per Rakesh Kumar:

These three appeals have been filed by the appellants against order-in-original No. JJ/ACE/02/2008 dated 28.1.08 passed by Commissioner of Customs, New Delhi by which penalties of Rs. One lakh, Rs.50,000/- and Rs.50,000/- respectively were imposed on M/s. R.U. Import-Export Pvt. Ltd. , Shri Rajesh Maikhuri and Shri Rakesh Kumar, respectively. The appellant Company M/s. R.U. Import-Export Pvt. Ltd., is a CHA company having CHA licence granted under the CHA Licensing Regulations, 2004. Shri Rajesh Maikhuri is the Managing Director of aforesaid CHA company and Shri Rakesh Kumar is an employee holding G-card of the CHA company. The facts leading to these appeals, are in brief, ~~are~~ as under:

1.1. Three shipping bills were filed by M/s Rupsy Enterprises on 13.1.2006 for export of consignments declared to be consisting of "leather goods, leather shoe uppers". Each of these shipping bills covered 21 packages declared to be containing 3150 pieces of leather shoe uppers with FOB value of Rs.24,55,601/- each. These exports were under draw back claim, the amount of which claimed under each shipping bill was Rs. 1,89,000/-. The name of the CHA, as mentioned on the shipping bills through whom the same were filed, was M/s. R.U. Import-Export Pvt. Ltd. When the shipping bills were filed, the Assistant Commissioner, Export Shed (Appraising) had ordered for examination of 17 packages from 3 shipping bills and also for showing the samples. When the samples drawn from the consignment were presented to the Assistant Commissioner, Export Shed (Appraising), he immediately ordered 100% examination of the consignment. But the CHA did not turn up for 100% examination. The consignments were finally examined 100% on 20.1.2006 in the presence of a representative of CHA Shri Rakesh Kumar and independent witnesses, and the same were found to be containing very cheap quality rexine shoe uppers, cotton shoe uppers, and scrap leather shoe uppers. The market price of rexine/cotton shoe upper was between Rs.45/- to Rs. 50/- per piece and price of scrap leather shoe uppers was between Rs. 10/- to Rs.20/- per piece, while the declared FOB value of shoe uppers was Rs. 810/- per piece.(10.2 British $ Serlings) per piece. It, therefore, appeared that description and value of export consignments had been grossly over declared with intention to fraudulently claim draw back, which was not admissible. In the course of inquiry into this matter, the statement of Shri Rajesh Maikhuri was recorded on 23.3.2006 wherein he stated that one Shri S. Roy had prepared the Annexure A, signed the shipping bill, that one Shri Pawan Kumar had given the invoice to Shri S. Roy to file the shipping bills; and that Shri Pawan Kumar and Shri S. Roy had brought the goods to the Customs Area. Shri Pawan Kumar was only a forwarding agent and he in his statement dated 17.4.2006 stated that he was proprietor of firm M/s. Aayush Enterprises engaged in the business of forwarding; that it deal with exports and CHAs for arranging the export shipments, that Shri Amarjeet Singh was the proprietor of M/s. Rupsy Enterprises; that from M/s. Rupsy Enterprises he got the export job, for export of three consignments each of 21 packages declared to be of leather shoe uppers; that he handed over the export documents and related papers to Shri S. Roy and Shri S. Roy handed over the same to M/s. R.U. Import-Export Pvt. Ltd., that Shri Rakesh Kumar, employee of M/s. R.U. Import-Export Pvt. Ltd. was introduced to him by Shri S. Roy and that the value of the goods attempted to be exported had been grossly mis-declared. The statement of Shri S. Roy was recorded wherein he corroborated the statement of Shri Pawan Kumar. A show cause notice dated 8.1.2007 was issued to M/s. Rupsy Enterprises, Shri Amarjeet Singh the proprietor of M/s. Rupsy Enterprises and Shri Rajesh Maikhuri, Managing Director of M/s. R.U. Import-Export Pvt. Ltd., Shri Rakesh Kumar, employee and G.card holder of M/s. R.U. Import-Export Pvt. Ltd. Shri Pawan Kumar and Shri S. Roy for confiscation of goods attempted to be exported by grossly mis-declaring the description and value and imposition of penalty on all the noticees.

1.2. The show cause notice was adjudicated by the Commissioner vide order in appeal No. JJ/ACE/02/2008 dated 28.1.08 by which the three consignments declared to be containing leather shoe uppers were ordered to be confiscated under Section 113(i) of Customs Act, 1962 and penalties were imposed on the noticees including the appellants in this case M/s. R.U. Import-Export Pvt. Ltd., Shri Rajesh Maikhuri, Managing Director of M/s. R.U. Import-Export Pvt. Ltd. and Shri Rakesh Kumar, employee of the CHA company. It is against this order that the present three appeals have been filed.

2. Heard both sides.

2.1 Shri S.S.Arora, Advocate, the learned Counsel for the appellants pleaded that it is Shri Pawan Kumar and Shri S. Roy who had brought the impugned consignment to the Customs House; that Shri S. Roy had forged the signature of the employee of CHA company on the shipping bills; that initial examination of the goods had been conducted in the presence of Shri S. Roy and Shri Pawan Kumar; that as soon they came to know that it is to be examined 100%, they ran away with the documents; that the appellants in these proceedings had nothing to do with this illicit export; that it is only under the Custom's pressure that they obtained the shipping documents from Shri S. Roy; that only at the time of 100% examination, the appellant came to know that the description and value has been grossly mis-declared; that neither the appellant company nor its employee had received any remuneration for export of this consignment; and that in view of this, the appellant have not in any manner abetted the illicit export and hence imposition of penalty on them under provisions of section 114 of Customs Act was not called for. He relied upon the Tribunal's judgement in the case of Yash Exports Inc. vs. CC Lucknow reported in [2005 (179) ELT 238 (Tri-Del)] wherein the Tribunal held that in a case relating to over-invoicing of export goods, the person who did not submit shipping bills /related documents and had no vital role in over-invoicing and was not to get any share in booty, could not be held liable to penalty. He also cited a judgement of the Tribunal in the case of V.K. Jain & Co. vs. Commissioner of Customs, New Delhi reported in [2006 (201) ELT 48 (Tri-Del) and A.R.

Marines Pvt. Ltd. vs. CC (Exp) Mumbai reported in [2009 (237) ELT 393 (Tri-Mum)] wherein a similar view was taken.

2.2. Shri S.N. Srivastava, learned DR, defending the impugned order pleaded that from the role of noticees discussed by the Commissioner in the impugned order, it is very much clear that they had full knowledge of the illicit export, that the Commissioner has even given his finding that the appellant company M/s. R.U. Import-Export Pvt. Ltd. and its Managing Director who are actual the persons behind this illicit export, that if the appellant had nothing to do with the illicit export and had not filed the shipping bills, on which his signature has been forged, there is no explanation as to how the export documents came into their possession; that Shri Rajesh Maikhuri in his statement dated 24.8.06 has admitted that he knew Shri S.Roy for the past two years and that on 20.1.06, the export documents were given to him by Shri S. Roy; that this shows that this export had taken place with the knowledge of the appellants and appellants were aware of forging of their signatures and that only in these circumstances that the Commissioner has imposed penalty on them. Shri Srivastava emphasised that there is strong circumstantial evidence against the appellants and, hence penalty has been rightly imposed on them. Shri Srivastava also emphasised that at para 23 of the adjudication order, the Commissioner has given a clear finding and it is also agreed to by Shri Rakesh Kumar that the filing of the shipping bills was in his knowledge on 13.1.2006, the day when the shipping billls were filed which shows that the appellant company, its Managing Director and employee of Shri Rakesh Kumar were fully involved in this illicit import.

3. I have carefully considered the submissions from both sides and perused the records. In this case, there is no dispute about the fact that in respect of the three export consignments, description and value have been grossly mis-declared with intention to fraudulently claim drawback. The point of dispute is about the role of CHA company M/s. R.U. Import-Export Pvt. Ltd. through whom the shipping bills had been filed and its Managing Director Shri Rajesh Maikhuri and its employee Shri Rakesh Kumar. According to the appellant they had no role to play while according to the Department, in this illicit shipment, it is the CHA company and its Managing Director who were the real persons behind the same and forging of the signatures on the shipping bills by Shri S. Roy was within their knowledge. On the other hand, Shri Rajesh Maikhuri in his statement dated 23.3.2006 has stated that Shri S. Roy had prepared annexure A and submitted the same to the CMC for filing of shipping bills, that one Shri Pawan Kumar had given the export documents to Shri S. Roy for filing the shipping bill and it is Shri Pawan Kumar and Shri S. Roy who had brought the goods to the customs area. If Shri Rajesh Maikhuri had nothing to do with these consignments and the documents has been filed by mentioning the name of his company as CHA, there is no explanation as to how he is aware of these facts. It is also seen that Shri Rakesh Kumar, an employee of CHA company in his statement dated 24.1.2006 has stated that he knew Shri S. Roy for the past two years and that he was also aware that these

shipping bills in the name of his CHA company has been filed by Shri S. Roy and Shri Pawan Kumar on 13.1.2006. When it is clear that on the shipping bills, the signatures of Shri Rakesh Kumar has been forged and Shri Rakesh Kumar knew he has not signed these shipping bills filed in the name of CHA company on 13.1.2006, it is surprising that he still did not taken any action against Shri S. Roy and Shri Pawan Kumar for forgery of his signature on the shipping bills, It is therefore, clear that the shipping bills in the name of CHA has been filed with the full knowledge of Rakesh Kumar and the Managing Director of the CHA company. Though the appellant now plead that the shipping bills have been filed without their knowledge, this plea, in view of the facts mentioned above is not acceptable, more so, when the appellant even though accepting that Shri S. Roy has forged the signature of Rakesh Kumar on shipping bills but still no action has been taken by them against Shri S. Roy and Pawan Kumar. In view of this, I hold that penalty has been rightly imposed on the appellants and looking to the nature of offence the penalty is moderate. I, therefore, do not find any merit in these appeals. The same are dismissed.

(Rakesh Kumar)
Member(Technical)

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